

**DEPARTMENT OF STATE REVENUE  
LETTER OF FINDINGS NUMBER: 99-0488 MVE  
MOTOR VEHICLE EXCISE TAX  
For The Tax Period: 1997**

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**ISSUES**

**I. Motor Vehicle Excise Tax – Imposition**

**Authority:** IC 9-18-2-1, IC 6-8.1-5-1

The Taxpayer protests the imposition of the motor vehicle excise tax on his 1993 Buick.

**II. Tax Administration – Penalty**

**Authority:** IC 6-8.1-10-2.1, 45 IAC 15-11-2.

The Taxpayer protests the imposition of the negligence penalty.

**STATEMENT OF FACTS**

Taxpayers' were assessed Motor Vehicle Excise Tax for the period of December 31, 1996 to September 30, 1997. Taxpayers filed an IT-40 Full Year Resident Return. More facts are provided below as necessary.

**I. Motor Vehicle Excise Tax – Imposition**

**DISCUSSION**

Indiana Code Section 6-8.1-5-1 specifically provides that notice of a proposed assessment is *prima facie* evidence that the Department's claim for the unpaid tax is valid. It is the burden of the taxpayer to prove the proposed assessment is wrong. Here, the Taxpayer states they came to Indiana in April 1997, but retained a home in Michigan until approximately April 1998 and lived in a furnished apartment during this time. They contend they were undecided as to whether they would continue to reside in Indiana depending on whether they could sell their house.

However, the Taxpayers filed an Indiana IT-40 Full year Resident Return for 1997. By filing an Indiana Full-Year Resident tax return, the Taxpayers have conceded Indiana residency; and if the Taxpayers are correct that they were not Indiana residents, they would need to re-submit their tax forms for the year in question. Furthermore, the Taxpayers came to Indiana for employment purposes and continue to live and work in Indiana.

Pursuant to Indiana Code Section 9-18-2-1:

- (a) Within sixty (60) days of becoming an Indiana resident, a person must register all motor vehicles owned by the person that:
  - (1) are subject to the motor vehicle excise tax under IC 6-6-5; and
  - (2) will be operated in Indiana.

Therefore, the Taxpayer's protest must respectfully be denied.

### **FINDING**

The Taxpayer's protest is denied.

## **II. Tax Administration – Penalty**

### **DISCUSSION**

IC 6-8.1-10-2.1(d) allows a penalty to be waived upon a showing that the failure to pay the deficiency was due to reasonable cause. Also, 45 IAC 15-11-2(c) requires that in order to establish reasonable cause, the taxpayers must show that they exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed. The Department finds that the Taxpayers demonstrated reasonable cause for their failure to pay tax.

### **FINDING**

The Taxpayers' protest of the penalty is sustained.